

31A-2-214. Market assistance programs -- Joint underwriting associations.

(1) (a) The commissioner may by rule implement a market assistance program whereby all licensed insurers and producers may pool their information as to the available markets if the commissioner finds that in any part of this state:

(i) a line of insurance:

(A) is not generally available in the marketplace; or

(B) is priced in such a manner as to severely limit its availability; and

(ii) the public interest requires availability of the line of insurance described in Subsection (1)(a)(i).

(b) Insurers doing business in this state may, at their own instance or at the request of the commissioner, prepare and submit to the commissioner, for the commissioner's approval and adoption, voluntary plans providing any line of insurance coverage for all or any part of this state in which:

(i) the line of insurance:

(A) is not generally available in the voluntary market; or

(B) is priced in such a manner as to severely limit its availability; and

(ii) the public interest requires the availability of the coverage described in Subsection (1)(b)(i).

(2) (a) If the commissioner finds after notice and hearing that a market assistance program formed under Subsection (1)(a) or (b) has not met the needs it was intended to address, the commissioner may by rule form a joint underwriting association to make available the insurance to applicants who are in good faith entitled to but unable to procure this insurance through ordinary methods.

(b) The commissioner shall allow any market assistance program formed under Subsection (1)(a) or (b) a minimum of 30 days operation before the commissioner forms a joint underwriting association.

(c) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) unless the commissioner finds as a result of the hearing that:

(i) a certain coverage is not available or that the price for that coverage is no longer commensurate with the risk in this state; and

(ii) the coverage is:

(A) vital to the economic health of this state;

(B) vital to the quality of life in this state;

(C) vital in maintaining competition in insurance in this state; or

(D) the number of people affected is significant enough to justify its creation.

(d) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) on the basis that:

(i) applicants for particular lines of insurance are unable to pay a premium that is commensurate with the risk involved; or

(ii) the number of applicants or people affected is too small to justify its creation.

(e) Each joint underwriting association formed under Subsection (2)(a) shall require participation by all insurers licensed and engaged in writing that line of insurance or any component of that line of insurance within this state.

(f) Each association formed under Subsection (2)(a) shall:

(i) give consideration to:

- (A) the need for adequate and readily accessible coverage;
 - (B) alternative methods of improving the market affected;
 - (C) the preference of the insurers and producers;
 - (D) the inherent limitations of the insurance mechanism;
 - (E) the need for reasonable underwriting standards; and
 - (F) the requirement of reasonable loss prevention measures;
- (ii) establish procedures that will create minimum interference with the voluntary market;
- (iii) allocate the burden imposed by the association equitably and efficiently among the insurers doing business in this state;
- (iv) establish procedures for applicants and participants to have grievances reviewed by an impartial body;
- (v) provide for the method of classifying risks and making and filing applicable rates; and
- (vi) specify:
- (A) the basis of participation of insurers and producers in the association;
 - (B) the conditions under which risks must be accepted; and
 - (C) the commission rates to be paid for insurance business placed with the association.
- (g) Any deficit in an association in any year shall be recouped by rate increases for the association, applicable prospectively.
- (h) Any surplus in excess of the loss reserves of the association in any year shall be distributed either by rate decreases or by distribution to the members of the association on a pro-rata basis.
- (3) Notwithstanding Subsection (2), the commissioner may not create a joint underwriting association under Subsection (2) for:
- (a) life insurance;
 - (b) annuities;
 - (c) accident and health insurance;
 - (d) ocean marine insurance;
 - (e) medical malpractice insurance;
 - (f) earthquake insurance;
 - (g) workers' compensation insurance; or
 - (h) private passenger automobile liability insurance.
- (4) Every insurer and producer participating in a joint underwriting association adopted by the commissioner under Subsection (2) shall provide the services prescribed by the association to any person seeking coverage of the kind available in the plan, including full information about the requirements and procedures for obtaining coverage with the association.
- (5) If the commissioner finds that the lack of cooperating insurers or producers in an area makes the functioning of the association difficult, the commissioner may order the association to:
- (a) establish branch service offices;
 - (b) make special contracts for provision of the service; or
 - (c) take other appropriate steps to ensure that service is available.
- (6) (a) The association may issue policies for a period of one year.

(b) If, at the end of any one year period, the commissioner determines that the market conditions justify the continued existence of the association, the commissioner may reauthorize its existence.

(c) In reauthorizing the association in accordance with this Subsection (6), the commissioner shall follow the procedure set forth in Subsection (2).

Amended by Chapter 298, 2003 General Session